

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations

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9 October 2014

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Your Excellency, General and Minister,

Re: Threats against lawyers: Mr. Gustaf Kawer and Ms. Latifah Anum Siregar

Lawyers' Rights Watch Canada (LRWC) is a committee of Canadian lawyers who promote human rights and the rule of law through advocacy, education and research. LRWC is an NGO in Special Consultative Status with the Economic and Social Council (ECOSOC) of the United Nations (UN).

We are writing to follow up on a letter written to Gen. Sutarman by one of our members on 25 September 2014 expressing concerns about judicial harassment of a lawyer, Mr. Gustaf Kawer. We also wish to raise concerns about the safety of lawyer Ms. Latifah Anum Siregar.

Judicial harassment of Mr. Gustaf Kawer, lawyer

Mr Kawer is a prominent human rights lawyer in the province of Papua, Indonesia, and the Litigation Coordinator for the Civil Society Coalition for the Rule of Law and Human Rights in Papua province. While fulfilling his responsibilities as a lawyer, Mr Kawer was accused by the Papua Regional Police of "crimes against public authority" under articles 211 and 212 of the *Indonesian Penal Code*, which prohibit violence or threats of violence against public officials. If found guilty, he faces up to four years in prison. The charges refer to a court hearing on 12 June 2014 during which Mr Kawer allegedly insulted a judge, Mr Warisman Sotaronggal. A week before this hearing, Mr Kawer had applied for the postponement of the hearing on behalf of his client. At the hearing, the court denied the postponement and proceeded with the hearing in the absence of Mr Kawer and his client. Upon his arrival to the court, Mr Kawer raised an objection against the dismissal, stating that the court had granted a postponement on three previous occasions at the request of the government. Reportedly, Mr Kawer was asked to leave the courtroom if he disagreed with the court's decision, which Mr Kawer did.

On 22 August, Mr Kawer was summoned by the Papua Regional Police to provide evidence stated to be related to "coercion and rebelliousness," but no further information was provided. This summons was sent directly to

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Mr. Kawer in contravention of an agreement between the Indonesian National Police and the Indonesian Bar Association (PERADI) dated 27 February 2012 that any summonses issued to lawyers related to their work are to be directed to PERADI. Mr Kawer declined to appear. On 25 August 2014, a second summons was submitted, this time to PERADI, requesting Mr Kawer's appearance for interrogation on 1 September 2014. PERADI declined this second summons, stating that it would comply with the summons only after the Board of PERADI had investigated the matter. On 17 September 2014, a police officer in plain clothes visited Mr Kawer's home to deliver a summons to Mr. Kawer. Since Mr. Kawer was not at home, his wife refused to accept the summons. Reportedly, the police officer attempted to take photographs of Mr Kawer's wife and remained near the house taking photographs for some time, infringing on the Kawers' right to privacy and creating a sense of intimidation.

The criminal investigation initiated by the Papua Regional Police against Mr Kawer relate solely to his legitimate work as a lawyer. The use of Articles 211 and 212 of the *Indonesian Penal Code* against Mr Kawer appears to be part of an unlawful campaign to obstruct Mr. Kawer's legitimate and peaceful activities as a lawyer by attempting to inappropriately criminalize statements made in court in the course of representing a client and by falsely impugning his reputation.

Article 16 of *Indonesian Law on Advocates* No. 18/2003 provides that an advocate shall not be subject to criminal or civil action in relation to the performance in good faith of his or her professional duties in defending a client in court. In a recent judgment, the Constitutional Court confirmed that Article 16 also applies to an advocate's performance in good faith of professional duties in defending a client outside the court.¹

Duty to investigate an attack on Ms. Latifah Anum Siregar, lawyer

Ms. Latifah Anum Siregar is a human rights lawyer in *Jayapura*, Papua, and has represented numerous victims of human rights violations in the province of Papua for over a decade. She is also the Director of Alliance of Democracy for Papua (ALDP), a human rights organization in Papua. She is currently defending an indigenous leader, Mr. Areki Wanimbo, head of the Lani Besar Tribal Council, who was arrested on 6 August 2014 and charged with "separatism" for allegedly assisting French journalists to make a documentary about the separatist movement in the Papuan region. Ms. Latifah Anum Siregar is challenging his arrest and detention as being unlawful and in violation of Indonesia's *Criminal Procedure Code*.

On 16 September 2014 Ms. Latifah Anum Siregar represented her client in a pre-trial court hearing in Wamena, Papua. On her way back from the court hearing to her hotel Ms. Latifah Anum Siregar was attacked by an unknown person or persons who injured her hand with a knife and stole her suitcase containing her laptop computer and documents related to her client's case. Ms. Siregar reported the case to police at the earliest opportunity. On 16 September 2014, Latifah Anum Siregar was unable to make a formal complaint to police as there was no police station near her hotel, and she did not feel safe enough to search for police station during the night. As she had responsibilities in court the following day, Ms. Siregar reported the attack to officials when she reached Wamema airport on 17 September 2014.

Ms. Siregar is entitled to a thorough and impartial investigation of this attack against her, which is suspected to be related to her work as a lawyer representing her client.

We draw your attention the *International Covenant on Civil and Political Rights* (ICCPR) to which Indonesia acceded in 2006. In particular, we draw your attention to:

- Article 9, which states: "1. Everyone has the right to liberty and security of person."
- Article 2, by which "3. Each State Party to the present Covenant undertakes: ...(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy.:

¹ Constitutional Court Judgment No. 26/PUU-XI/2013.

- Article 15, which states:
“1 . No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed.”
- Article 17 which states:
1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.
- Article 19, which states that “2. Everyone shall have the right to freedom of expression...”

Indonesia, as a state Party to the ICCPR, is obligated to take all measures necessary to ensure the protection of these rights.

We also draw to your attention the UN *Basic Principles on the Role of Lawyers (Basic Principles)* and the UN *Declaration on Human Rights Defenders*.²

The *Basic Principles* provide the following guarantees for the functioning of lawyers:

- 16 . Governments shall ensure that lawyers
 - (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference;
 - (b) are able to travel and to consult with their clients freely both within their own country and abroad; and
 - (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

19. No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles.

20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

The UN *Declaration on Human Rights Defenders* provides in Article 12 that:

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

² UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: resolution / adopted by the General Assembly*, 8 March 1999, A/RES/53/144, available at: <http://www.refworld.org/docid/3b00f54c14.html>. The Declaration, while not in itself a binding instrument, is based on human rights standards enshrined in other international instruments that are legally binding including the ICCPR. The Declaration was adopted by consensus of the General Assembly and thus represents a unanimous commitment by States to its implementation.

2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

We request that all authorities comply with the ICCPR and other international human rights law obligations including the *Basic Principles and Declaration on Human Rights Defenders* and call on the Government of Indonesia to:

- take all necessary measures to guarantee the safety and wellbeing of Mr Gustaf Kawer and his family and Ms. Latifah Anum Siregar;
- ensure that all members of the police are made aware of the legitimate role of lawyers and of the police duty to protect lawyers from interference that threatens harm to their work or their safety;
- urge the Papua Regional Police to immediately halt the investigation of Mr Gustaf Kawer;
- conduct a prompt, independent and impartial investigation into the attack on Ms. Latifah Anum Siregar and bring to justice the perpetrators involved in the attack of Ms. Latifah Anum Siregar;
- put an end to all forms of harassment against lawyers in Indonesia.

Thank you for your attention to this matter. We would appreciate your early response.

Sincerely,



Catherine Morris,
Member, Lawyers' Rights Watch Canada

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